

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Bodo KUKLINSKI *et al.*

Serial No.: 10/511,882

Filed: October 19, 2004

For: USE OF A MARE'S MILK CONCENTRATE
DRIED ON A HIGHLY-DISPERSED,
BIOLOGICALLY INERT MATRIX

Confirmation No.: 6370

Group Art Unit: 1657

Examiner: SCHUBERG, Laura J.

Atty. Dkt. No.: SONN:057US

CERTIFICATE OF ELECTRONIC TRANSMISSION
37 C.F.R. § 1.8

I hereby certify that this Appeal Brief is being electronically
filed with the United States Patent and Trademark Office
via EFS-Web on the date below:

September 7, 2010
Date


Travis M. Wohlers

REPLY BRIEF

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Appellant submits this Reply Brief to the Board of Patent Appeals and Interferences in response to the Examiner's Answer dated July 7, 2010. It is believed that no fees are required in connection with the filing of this paper; however, should any fees under 37 C.F.R. §§ 1.16 to 1.21 be required for any reason relating to the enclosed material, the Commissioner is authorized to deduct said fees from Fulbright & Jaworski L.L.P. Deposit Account No.: 50-1212/SONN:057US/10411925.

I. ARGUMENT

A significant deficiency in the pending obviousness rejection is the lack of a reason to combine the references teachings to arrive at the claimed inventions. Fuchs provided *no* specific disclosure or suggestion that a milk concentrate dried on a biologically inert, disperse matrix can be used in a method treating neurodermatitis or psoriasis. Bühlbäcker reported that mare's milk was *ineffective* in treating neurodermatitis if given alone. And, SU 1740002 reported some beneficial effects in the treatment of neurodermatitis and eczema using a *fermented* milk product called koumiss. None of the references teach the use of mare's milk concentrate dried on a biologically inert, disperse matrix for the treatment of neurodermatitis or psoriasis; and a person of ordinary skill in the art would not have had a reason to modify or combine the references to achieve the method recited in the current claims.

In an attempt to establish a motivation to combine the cited references, the Examiner's Answer repeatedly cites to page 7 in the translation of the Fuchs reference where it is stated that "an object of the invention to make available a process for producing a concentrate from unsaturated fatty acids, in which the above-mentioned disadvantages are circumvented, and in which however the high health promoting value of the unsaturated fatty acids can be maintained." See, e.g., Examiner's Answer, p. 8, 10, and 12. The Examiner thus concludes that one of ordinary skill in the art would have expected the composition of Fuchs to perform better than the composition of Bühlbäcker because Fuchs teaches that the method is significantly improved over the prior art. Examiner's Answer, p. 12. This conclusion is flawed for at least two reasons.

First, the "disadvantages" to which Fuchs was referring were the disadvantages of *other drying methods*. Fuchs stated that the "health promoting value of the unsaturated fatty acids can be *maintained*." Thus, the Examiner's assertion that a person of ordinary skill in the art would

expect the health benefits of Bühlbäcker's composition to be improved by subjecting it to the drying process of Fuchs are unfounded.

Second, the statement on page 7 in the translation of the Fuchs reference was not made in regard to mare's milk. Thus, the Examiner's assertion that a person of ordinary skill in the art would expect the health benefits of Bühlbäcker's composition to be improved by subjecting it to the drying process of Fuchs are unfounded for this additional reason.

Thus, in light of the teachings of Fuchs and Bühlbäcker, a person of ordinary skill in the art would have no reason to expect that the a mare's milk concentrate dried on a biologically inert, disperse matrix would be any more effective at treating neurodermatitis or psoriasis than the native mare's milk disclosed in Bühlbäcker. Further in light of the teachings in SU 1740002, a person of ordinary skill in the art would have been led to ferment the mare's milk in order to increase its effectiveness. Subjecting fermented mare's milk to a drying process would be incompatible with the teachings of SU 1740002 regarding the sedative effect of the alcohol in the koumiss (SU 1740002 at page 4); because drying would result in the loss of the alcohol through evaporation. Accordingly, drying koumiss would deprive it of the benefits of more sound sleep, reduction in skin itching, and relief of high nerve excitability attributed to the alcohol by SU 1740002 (SU 1740002 at page 4).

In summary, claims 9-10 and 14-22 are patentable over the combination of Fuchs, SU 1740002, and Bühlbäcker at least because:

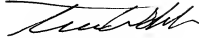
- Bühlbäcker reported that native mare's milk was *ineffective* in treating neurodermatitis if given alone.

- Fuchs provided no specific disclosure or suggestion that a milk concentrate dried on a biologically inert, disperse matrix can be used in a method treating neurodermatitis or psoriasis.
- SU 1740002 reported some beneficial effects in the treatment of neurodermatitis and eczema using a *fermented* mare's milk product.
- In view of the teachings of Fuchs, SU 1740002, and Bühlbäcker, a person of ordinary skill in the art would conclude that mare's milk needed to be *fermented* to have beneficial effects in the treatment of neurodermatitis.
- Furthermore, a person of ordinary skill in the art would not have dried the fermented mare's milk described by SU 1740002 using the drying process described by Fuchs, because the drying process would result in the loss of the alcohol and its attributed benefits of more sound sleep, reduction in skin itching, and relief of high nerve excitability.
- The evidence in the specification and the Fuchs Declaration demonstrate that the claimed method is not only therapeutically effective, but that it is therapeutically effective in a surprisingly short period of time.

In view of the above, Claims 9-10 and 14-22 are patentable over the cited references.

Appellants, therefore, request that the Board reverse this rejection.

Respectfully submitted,



Travis M. Wohlers
Reg. No. 57,423
Attorney for Appellant

FULBRIGHT & JAWORSKI L.L.P.
600 Congress Avenue, Suite 2400
Austin, Texas 78701
(512) 536-5654 (telephone)
(512) 536-3035 (facsimile)

Date: September 7, 2010